

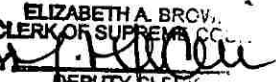
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HARVEY REYES-PARRISH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87957-COA

HARVEY REYES-PARRISH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87958-COA

FILED
DEC 30 2024
ELIZABETH A. BROV,
CLERK OF SUPREME CC.
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Harvey Reyes-Parrish appeals from a district court order denying his postconviction petition for a writ of habeas corpus filed on September 16, 2020, and supplemental pleadings, in district court case no. CR19-1015 (Docket No. 87958-COA) and district court case no. CR19-1016 (Docket No. 87957-COA). These cases were consolidated on appeal. See NRAP 3(b). Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Reyes-Parrish argues the district court erred in denying his claim of ineffective assistance of counsel. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and

prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 687, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Reyes-Parrish claimed that counsel was ineffective for failing to obtain substance abuse and psychological evaluations to present as mitigating evidence at sentencing. Specifically, Reyes-Parrish alleged that counsel should have obtained and presented the findings of Dr. Melissa Piasecki, who would have reported that Reyes-Parrish's substance abuse, trauma, and mental health impaired his judgment and impulse control and increased his risk of criminal conduct.

Even assuming counsel performed deficiently by failing to obtain substance abuse and psychological evaluations to present as mitigating evidence at sentencing, Reyes-Parrish did not demonstrate prejudice. The district court conducted an evidentiary hearing on Reyes-Parrish's claim where counsel and Dr. Piasecki testified. Dr. Piasecki's testimony recounted Reyes-Parrish's history of trauma and substance abuse, including a family history of substance use. Dr. Piasecki also

commented that Reyes-Parrish used drugs and alcohol at a young age, observed violence as a child and in prison, and grew up in a high-risk community where there was gang violence. She further testified that Reyes-Parrish met the criteria for diagnoses of methamphetamine and marijuana use disorders but did not meet the criteria for post-traumatic stress disorder (PTSD) and depressive disorder. She explained that Reyes-Parrish's social history, including his family history and past trauma, put him at an increased risk for substance use disorders, PTSD, and depression. She further explained that Reyes-Parrish's chronic substance use impaired his ability to develop executive functioning, making him less likely to function in social roles such as a reliable worker and, in turn, making him more likely to end up with high-risk peers who engage in criminal activity.

The presentence investigation report (PSI) stated that Reyes-Parrish: (1) engaged in drug and alcohol use at an early age, (2) had a history of alleged gang affiliation, (3) used drugs with his mother, who went to prison when he was 16, and (4) suffered from PTSD due to graphic things he had witnessed in prison. Notwithstanding Dr. Piasecki's opinion that Reyes-Parrish's substance abuse, social history, or mental health would likely lead him to a peer-group more inclined to engage in criminal activity thus making him more likely to engage in criminal activity, the evidence Dr. Piasecki offered was largely duplicative of what was presented in the PSI and therefore unlikely to render a different sentencing result. *Cf. Cullen v. Pinholster*, 563 U.S. 170, 200 (2011) (concluding that there was no reasonable probability that "new" mitigation evidence would have changed

the jury's verdict regarding a sentence of death, in part because "[t]he 'new' evidence largely duplicated the mitigation evidence at trial").

In addition, the district court—the same judge that imposed Reyes-Parrish's sentences—heard the mitigating evidence presented by Reyes-Parrish at the evidentiary hearing and concluded it would not have imposed a lesser sentence based on the seriousness of the charges in both cases, the escalating nature of Reyes-Parrish's criminal conduct, the fact that Reyes-Parrish was involved in such serious criminal conduct shortly after being discharged from supervision, and the extent of his criminal history. In support of its conclusion, the district court found that: (1) at the time of sentencing, Reyes-Parrish had six prior felony convictions, (2) he had his probation and parole each revoked twice, (3) he had been discharged from parole approximately one month prior to committing the offenses alleged in CR19-1015, (4) the allegations in CR19-1015 were "extremely serious" and related to sex trafficking, (5) in CR19-1016, Reyes-Parrish exchanged a stolen firearm with a confidential informant in relation to a drug transaction and, during a subsequent traffic stop, was found in possession of 34 grams of methamphetamine, (6) at sentencing, an FBI special agent testified that Reyes-Parrish "was still engaged in criminal conduct even while he was incarcerated on this last prison sentence by directing a prostitute to work on his behalf," (7) Reyes-Parrish took steps to cover his crimes by deleting data from electronic devices and directing the victims to delete data from their devices as well, and (8) Reyes-Parrish demonstrated he was an ongoing risk of criminal activity based on the

special agent's testimony paired with Reyes-Parrish's criminal history and the allegations in both cases.

Reyes-Parrish does not challenge these findings on appeal, and we conclude they are not clearly erroneous. In light of these circumstances, Reyes-Parrish failed to demonstrate a reasonable probability of a different sentence had counsel presented the proffered evidence in mitigation. Therefore, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Connie J. Steinheimer, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk